SINGAPORE REPORTS

CHANG BOCK ENG & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Sinnathuray & Choor Singh JJ.) April 16, 1979]

[Singapore — Criminal Appeal No. 18 of 1977]

Criminal Law and Procedure — Armed robbery — Accomplice — Scope of Arms Offences Act, 1973, s. 5.

Arms Offences Act, 1973, s. 5 — Scope of.

The two appellants in this case were jointly tried for armed robbery. The charge against the first appellant was for committing an offence punishable under section 4 of the Arms Offences Act, 1973. The second appellant was charged as an accomplice, with an offence punishable under section 5 of the said Act.

One of the issues raised evolved around the scope of section 5 of the Arms Offences Act.

Held, dismissing the appeals: (1) it is not a requirement of section 5 of the Arms Offences Act that an accomplice in the commission or attempted commission of a criminal offence must be proved to have knowledge at the time he joins the principal that the latter is armed with a firearm;

(2) what is required is proof that the accomplice may reasonably be presumed to have knowledge that the person who used the firearm in committing or attempting to commit an offence was either carrying it, or had it in his possession, or had it under his control during the commission or attempted commission of that offence;

(3) the burden then shifts on the accomplice to prove that he had taken all reasonable steps to prevent the use by the principal offender of such firearm in the commission or attempted commission of that offence.

COURT OF CRIMINAL APPEAL.

Datuk P. Suppiah for the first appellant.

J.B. Jeyaretnam for the second appellant.

Lawrence Ang (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Choor Singh J. (delivering the judgment of the Court): The two appellants were tried jointly by the High Court. The charge against the first appellant was as follows: —

"Chang Bock Eng, you are charged that you on or about the 18th day of October 1976 at about 6.20 p.m. at the premises of Chin Wah (Paints) Pte. Ltd. at No. 566-A Balestier Road, Singapore, did use an arm, to wit, a .38 revolver No. 538181 in that you did cause a bullet to be discharged from the said arm with intent to cause physical injury to a person, and you have thereby committed an offence punishable under section 4 of the Arms Offences Act, No. 61 of 1973."

The charge against the second appellant was as follows: —

"Tay Cher Kiang, you are charged that you on or about the 18th day of October 1976, at about 6.20 p.m. at the premises of Chin Wah (Paints) Pte. Ltd. at No. 566-A Balestier Road, Singapore, in an armed robbery committed by you and one Chang Bock Eng in which an arm, to wit, a Colt .38 revolver No. 538181 was used by the said Chang Bock Eng, were an accomplice present at the scene of the said robbery who might reasonably be presumed to have known that the said Chang Bock Eng was carrying the said arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973, No. 61 of 1973."

Both appellants were convicted on their respective charges and sentenced to death. Both appealed against their conviction and sentence. At the conclusion of the hearing of their appeals we dismissed both appeals and stated that we would give our reasons later. We now proceed to do so.

The prosecution proved that on October 18, 1976 at about 6 p.m. Chan Chin Tong the Managing Director of Chin Wah (Paints) Pte. Ltd. was sitting in his office at 566-A Balestier Road. The Company carried on business at a two-storey shophouse facing Balestier Road. Together with Chan Chin Tong in the office part of the shophouse was his sister-in-law Madam Kang Geok Hun who was employed there as a cashier. A Director of the Company named Chan Tai Peo was at the rear portion of the shop. The front metal flap doors of the shop were shut but not locked. Suddenly one of the metal flap doors was pushed open and the appellants dashed into the shop. The first appellant whipped out a revolver while the second appellant brandished a knife. The first appellant was wearing dark glasses while the second appellant had a handkerchief tied round his face in order to conceal his identity. Madam Kang on seeing this immediately removed her two diamond rings from her fingers, stooped down and placed them under a table inside the office. The first appellant saw this and picked up both rings and kept them in his trousers pocket. As he was doing this Madam Kang unstrapped her Omega wrist watch and kept it under a table but this was also noticed by the first appellant who grabbed the watch and kept it in his trousers pocket. The first appellant then ordered Chan Chin Tong to open the iron safe which was inside the office. Chan Chin Tong tried to open it but failed. At this juncture Chan Tai Peo who was at the rear of the shop made some noise whilst sweeping the floor. Leaving the second appellant to guard Chan Chin Tong and Madam Kang the first appellant went to the rear and at the point of his gun brought Chan Tai Peo to the office. By this time Chan Chin Tong had managed to open the safe. There was no money in the safe. The first appellant then ordered Chan Chin Tong to open the two locked drawers in the safe. Chan Chin Tong stated that he did not have the keys whereupon the first appellant kicked him. Madam Kang then volunteered to get the keys. In the meanwhile the second appellant had ordered Chan Tai Peo to squat down on the floor and not to look at him under threat, that if he did so he would gouge out his eyes. The second appellant then tied the hands of Chan Tai Peo with raffia strings. Madam Kang opened the two drawers and brought out a bundle of $1 notes amounting to $1,000 and some rolls of 50¢ and 20¢ coins. The first appellant heard a bang at the front door, went to see what it was and came back to the office. The first appellant then demanded some more money. Madam Kang stated that there was no more money and begged them to leave. The first appellant insisted that there must be more money and said, "If I don't stab you people once you people will not be afraid." Madam Kang then went out of the office to a desk, removed a drawer from it and brought it to the office. The second appellant then grabbed all the currency notes in the drawer amounting to about $200 and kept the money in his pocket. The appellants then

searched the pockets of their victims. The second appellant cut off the telephone wires.

While this was taking place, unknown to the inmates of the shop as well as the appellants, a neighbour had alerted the police. A mobile police patrol car arrived at the scene. P.C. Neo Koon Sen and P.C. Ho Yu Chon found that the front metal flap door closed. P.C. Neo managed to push open one of the metal flap doors and managed to walk in sideways as the entrance was too narrow. He was followed by P.C. Ho. They noticed the appellants and that the first appellant was armed with a revolver. On seeing this both constables then drew their revolvers. As soon as the first appellant saw this he pointed his revolver at the temple of Chan Chin Tong and held him as a hostage. The first appellant then told P.C. Neo that if he opened fire he would shoot Chan Chin Tong. P.C. Neo at this stage was slowly making his way towards the office whilst the first appellant was walking out of the office with Chan Chin Tong in front of him. The first appellant's left hand was holding the collar of Chan Chin Tong's shirt and with his right hand he was pointing his revolver at Chan Chin Tong's temple. Both policemen with their revolvers trained on the gunman slowly retreated to the front door. P.C. Ho who was nearest to the door went out of the shop whilst P.C. Neo was still slowly retreating towards the door. On reaching the door P.C. Neo could not move backwards any further as the width of the door was too narrow. All this while P.C. Neo was facing the first appellant who was pointing his revolver at the temple of Chan Chin Tong. P.C. Neo then gradually turned towards his right in order to move sideways out of the shop. At this point of time when P.C. Neo turned to his right he heard a shot being discharged and felt something hitting his left hand and right arm and he knew he had been shot. He was bleeding profusely and came out of the shop quickly and closed the flap door after him. He then ran towards his patrol car.

While all this was happening other police cars had been alerted and were proceeding to the scene. In one of these patrol cars was Sgt. Tan Kah Kiau who arrived at the shop just after P.C. Neo had come out of the shop. Sgt. Tan pushed open the flap door and looked into the shop and to his surprise saw the first appellant pointing his revolver at him. Sgt. Tan ordered the first appellant to drop his revolver and surrender. The first appellant did not obey the order and continued to point his revolver at Sgt. Tan who then fired two rounds in succession. After that Sgt. Tan paused for a while and noticed that the first appellant had begun to lower his right hand. Sgt. Tan again ordered the first appellant to drop his revolver which he then did. Together with other police constables who had by now come into the shop Sgt. Tan arrested the first appellant. Chan Chin Tong ran out of the shop shouting in Hokkien that he had been shot. The first appellant's revolver which was a .38 special calibre Colt with a six cylinder capacity for six cartridges was seized immediately by the police.

All this while the second appellant was holding a dagger and guarding Madam Kang and Chan Tai Peo. On seeing the police apprehend the first appellant he took flight, ran to the rear of the shop, climbed on some crates and jumped over the wall into a back lane and fled from the scene. He was arrested a week later.

Both appellants made cautioned statements to the police. The statement made by the first appellant reads as follows: —

"At that time when I came out from the paint shop a policeman pointed a gun at me and asked me to put up my hands. I then went back to the shop and caught hold of the manager. I then walked out with him. At the time when I reached the door I saw a few policemen outside. One of them then shot at my hand. When I was shot my gun dropped to the ground and I heard a shot from my gun. I did not open fire. I do not know how the policeman was shot. The police rushed at me and caught me."

The statement made by the second appellant reads as follows: —

"On a Monday afternoon Ah Eng came to my house and called me to follow him to do a robbery. I told him that I am not free then. Ah Eng said that since he had told me about this robbery I must follow him. I then followed him to commit this robbery. At the place we waited at the coffee shop for about fifteen minutes. Ah Eng was having a plastic bag. Ah Eng walked into the paint shop and I followed him. When entering the paint shop I saw him take out a gun from the plastic bag and he instructed me to close the paint shop. We went inside the office and Ah Eng handed over a dagger to me. He called a person inside the shop to open the safe. We took coins and Ah Eng instructed me to remove the chain from the lady. Ah Eng kept on asking for more money. The person said no more. Ah Eng then went to the back of the shop and brought out another man. Ah Eng informed me to tie him up. I then tied him. Ah Eng went to search the safe again and nothing was found. He called a lady to go to the front table to look for more money. The lady handed to me about $30/-. I put it in a paper bag. I saw one policeman run into the shop. I then squat down behind the table. Ah Eng took a fat man and rushed out holding a gun in one hand. I heard a bullet sound. Two to three minutes I heard two more bullets sound. I then rushed to the back and climbed a wall and ran into a house. I take out my shirt and walked towards the direction of Toa Payoh and took a taxi and went home."

At the conclusion of the case for the prosecution both appellants were called upon to enter upon their defence. Both gave evidence on oath. The first appellant admitted committing robbery and gave the following version. He stated that he was holding Chan Chin Tong with his left hand and in his right hand he held his revolver. Chan Chin Tong then put up a struggle. During the struggle he used his right hand which was holding the revolver to press down on Chan Chin Tong's right shoulder. While so doing the revolver which was then being held obliquely went off and P.C. Neo was hit accidentally.

The second appellant stated that the first appellant met him in a coffee shop and persuaded him to take part in the robbery. He did not carry anything on his person but he noticed that the first appellant was carrying a paper bag. He did not know what was in the paper bag. On arriving at 566-A Balestier Road the first appellant told him that he was to be a look-out man and that it was not necessary for him to go into the shop. The second appellant stated that he therefore remained outside the shop but about a minute later he heard the first appellant calling out to him to enter. He did so and saw a male and female in the office with the first appellant. He was

afraid of being recognised and he took out a handkerchief and covered the bottom half of his face with it. He then walked towards the office. At this stage the first appellant handed him the paper bag and told him that there was a knife inside it. He also noticed that the first appellant was carrying a revolver. He took the knife from the paper bag and noticed several things in it which he put in his shirt pocket. He saw the first appellant go to the rear of the shop and return with Chan Tai Peo. He admitted telling Chan Tai Peo to squat down and also admitted threatening him that he would gouge out his eyes. He admitted tying Chan Tai Peo's hands in front of him. He saw the first appellant take the dollar notes and coins which Madam Kang produced from the drawers of the safe. Whilst still in the office he heard a knock on the front door and saw a policeman with a revolver in his hand pointing directly at the office. As soon as he saw this he became frightened. He put the knife on the table and squatted down. He observed Madam Kang running out of the office. He saw the first appellant and Chan Chin Tong going out of the office with Chan Chin Tong walking ahead of him. He also saw another policeman in the shop holding a revolver and pointing it towards the office. He became more frightened on seeing this second policeman. When he saw the second policeman he ran towards the side door. When he reached the rear gate he found that it was locked. Before he could climb on some wooden crates he heard a bang. He did not know what it was as he had never heard a gunshot before. On hearing the bang he quickly climbed on the crates and tried to escape over the wall. When he was about to climb over the wall he heard another two bangs. He believed it was the police who opened fire. He then jumped over the wall on to the backlane and escaped from the scene.

The trial judges disbelieved both appellants, rejected their defence and convicted them on their respective charges.

Before us, the submissions of both counsel were based on the provisions of the Arms Offences Act, 1973. The relevant provisions read as follows: —

"Section 2. In this Act, unless the context otherwise requires —

'arm' means any firearm ... from which any ... bullet ... can be discharged ...;

'use', with its grammatical variations, means —

(a) in relation to a firearm ... from which any ... bullet ... can be discharged ... to cause such bullet ... to be discharged with intent to cause physical injury to any person.

Section 4. Subject to any exception referred to in Chapter IV of the Penal Code which may be applicable, any person who uses or attempts to use any arm shall on conviction be punished with death.

Section 5. Where any arm is used by any person in committing or in attempting to commit any offence, each of his accomplices in respect of the last mentioned offence present at the scene of such offence who may reasonably be presumed to have known that such person was carrying or had in his possession or under his control such arm, shall, unless he proves that he had taken all reasonable steps to prevent the use of such arm, be guilty of an offence under this Act and shall on conviction be punished with death."

Counsel for the first appellant submitted that to bring home the charge against the first appellant, under section 4 of the Act, the prosecution had to prove that the bullet from the first appellant's firearm was discharged with intent to cause physical injury to a person. Counsel submitted that there was no evidence of intent to cause physical injury as the only evidence on this issue was that of the first appellant who claimed that his firearm went off accidentally when his hostage Chan Chin Tong struggled in an attempt to escape. This defence of the first appellant that his gun went off accidentally was clearly before the trial judges who rejected it in these words: —

"... It was never put to P. C. Neo, P. C. Ho or Chan Tai Peo in cross-examination if they had observed Chan Chin Tong struggling with the first accused nor was Chan Chin Tong cross-examined about it, especially considering he was the one who allegedly put up the struggle. No mention whatever was made of the struggle during the course of which the first accused alleged the revolver was discharged. In his cautioned statement the first accused said, 'When I was shot my gun dropped to the ground and I did not open fire; I did not know how the policeman was shot'. In our view the alleged struggle was fictitious. In fact Chan Chin Tong would have been afraid to put up a struggle because the first accused's revolver was pointing at his temple and the slightest movement on his part may well have resulted in the first accused pulling the trigger. We did not believe the first accused. We rejected his defence...."

In our judgment, on the evidence before them, the trial judges were justified in rejecting the defence of the first appellant that his gun went off accidentally. On the totality of the evidence the inference was irresistible that the first appellant fired his gun at P.C. Neo in order to cause physical injury to him and accordingly the first appellant was rightly convicted under section 4 of the Arms Offences Act, 1973.

Counsel for the first appellant submitted further that, in the interests of justice, the trial judges should have recalled the prosecution witnesses and put to them the first appellant's version that his gun went off accidentally when his hostage Chan Chin Tong struggled in order to escape. We rejected the submission. The first appellant was defended by counsel who must have had good reason for not putting the appellant's version to the prosecution witnesses. If the trial judges had done so by recalling the prosecution witnesses and if the witnesses had denied the first appellant's version, it would have strengthened the prosecution's case against the first appellant. Furthermore, in such an event the action of the trial judges would have been open to criticism upon appeal. In our judgment this submission was entirely without merit.

The first submission of counsel for the second appellant related entirely to the proper construction of section 5 of the Arms Offences Act, 1973. The submission was that this section must be construed to mean that "a person who joins another in committing a crime knowing at the time he joins the other man that the other man is armed with a firearm is then guilty if the other man uses the firearm in the commission of the crime on which they had embarked if he was present at the scene of the crime along with the other man when he used the firearm". Counsel submitted that that was the only interpretation one can put to section 5 of the Act and contended that accordingly the second appellant was not guilty under section 5 because, first, he did not know when he entered the shop that the first appellant had a gun on him and

secondly, because he was not present when the gun was discharged as he was then over the wall and therefore not at the scene of the crime.

We were unable to accept this submission. In our opinion it was entirely without merit. It is not a requirement of section 5 of the Act that an accomplice in the commission or attempted commission of a criminal offence must be proved to have knowledge at the time he joins the principal that the latter is armed with a firearm. What is required is proof that the accomplice may reasonably be presumed to have knowledge that the person who used the firearm in committing or attempting to commit an offence was either (i) carrying it, or (ii) had it in his possession or (iii) had it under his control during the commission or attempted commission of that offence. The burden then shifts on the accomplice to prove that he had taken all reasonable steps to prevent the use by the principal offender of such firearm in the commission or attempted commission of that offence.

In the present case, as soon as the two appellants entered the shop, the first appellant whipped out his gun. The second appellant saw it. He admitted this in his cautioned statement. He admitted it in his evidence given on oath. He knew long before the first appellant "used" his gun within the meaning of the Act that the first appellant was carrying a gun. The second appellant did nothing about it. He took no steps at all to prevent the use of the gun by the first appellant.

The submission that the second appellant was not at the scene of the robbery when the gun was used by the first appellant does not bear examination. The second appellant admitted in his cautioned statement that he was still in the shop when he heard "one bullet sound" and that he heard "two more bullet sounds" before he rushed to the back and climbed over the wall. In his evidence given on oath he stated that he was in the back portion of the shop, and before he could climb on some crates he heard a gunshot. He was about to climb over the wall when he heard two more gunshots. It is clear from his own evidence and admissions that he was at the scene of the robbery when the first appellant used his gun. In any event, it was a finding of fact amply supported by the evidence.

There was one other submission by counsel for the second appellant. He submitted that the cautioned statement made by the second appellant to Inspector Balasubramaniam was wrongly admitted in evidence. Counsel contended that it was not a voluntary statement because the second appellant who was a heroin addict had symptoms of withdrawal at the time the statement was recorded; that he was in severe pain and did not have a free will; alternatively, that the statement was made in circumstances where the court should have considered it dangerous to admit it because the second appellant was in no condition to make a statement. It was alleged that the second appellant's mind was not lucid due to the withdrawal symptoms.

At the trial, the admission in evidence of the said cautioned statement was objected to by counsel for the second appellant and a trial within a trial was held to resolve the issue of admissibility.

At the conclusion of the trial within trial, the trial judges decided to admit the cautioned statement. In their grounds of decision they have stated: —

"Learned counsel for the second accused objected to the statement of the second accused being admitted in evidence on the grounds that at the time he made it the second accused, who is a heroin addict, was trembling and in a state of nervous shock as he had failed to take his usual dose of heroin. After hearing the evidence of the Inspector who took down the cautioned statement, the interpreter and the second accused, we were satisfied that at the time of making the cautioned statement the second accused was perfectly normal and that the statement was made freely and voluntarily. We admitted it in evidence and marked it P48."

The cautioned statement was admitted by the trial judges after a finding of fact that the second appellant when he made the statement was perfectly normal and that the statement was made freely and voluntarily. Under the circumstances there can be no grounds at all for excluding the statement.

In our judgment the trial judges were correct in deciding that the case against each appellant had been proved beyond a reasonable doubt and in convicting them on their respective charges. Their appeals against their convictions failed and were therefore dismissed.

Appeals dismissed.

Solicitors: *P. Suppiah & Co.; J.B. Jeyaretnam & Co.*

TONG KENG WAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) May 24 and October 27, 1978]
[Singapore — Magistrate's Appeal No. 68 of 1977]

Criminal Law and Procedure — Charge — Criminal breach of trust of a service revolver and ammunition belonging to government — Whether charge irregular — Former inspector charged under section 406, Penal Code — Scope of section 405 of the Penal Code and section 24(2) of the Police Force Act distinguished — Penal Code (Cap. 103), ss. 405 & 406 — Police Force Act (Cap. 78), s. 24(1) & (2).

Penal Code ss. 405 & 406 — Criminal breach of trust — "Dishonest" — Meaning of.

Police — Section 24, Police Force Act (Cap. 78).

The appellant in this case was a Police Inspector. He was issued by the Police Force with a service revolver and twelve rounds of ammunition. He was dismissed from the Force on February 14, 1975 but subsequent to his dismissal he did not deliver up the said revolver and ammunition as required under section 24(1) of the Police Force Act. He was consequently convicted on the re-amended charge for criminal breach of trust of the said revolver and ammunition and for failing to deliver them to the Police Force in violation of section 24(1) of the Police Force Act (Cap. 78), an offence punishable under section 406 of the Penal Code. He appealed. Counsel for the appellant argued, *inter alia,* that section 24(2) had created a specific offence and the appellant for failing to deliver up the revolver and ammunition should have been charged under section 24(2) of the Police Force Act and not under section 406 of the Penal Code and to have done so contravened the specific provisions of section 24(2). The court had therefore to decide whether section 405 of the Penal Code which defines criminal breach of trust, in so far as it applies to a police officer, had been repealed by section 24(2) of the Police Force Act.